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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,959	03/14/2001	Paul R. Sprehe	126470-1002	3694
32914 7590 01/29/2009 GARDERE WYNNE SEWELL LLP INTELLECTUAL PROPERTY SECTION 3000 THANKSGIVING TOWER 1601 ELM ST DALLAS, TX 75201-4761				
EXAMINER MONFELDT, SARAH M				
ART UNIT 3692		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/805,959

Applicant(s)

SPREHE, PAUL R.

Examiner

SARAH M. MONFELDT

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION
Status of Claims

1. This action is in reply to the Amendment/Response 15 December 2008s.
2. Claims 1, 4-19 were amended.
3. Claim 20 was added
4. Claims 1, 4-20 are currently pending and have been examined.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
6. Claims 1, 4-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

"(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines.');" Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski*, 88 USPQ2d 1385, 1391 (*Fed. Cir. 2008*))

Also noted in *Bilski* is the statement, "Process claim that recites fundamental principle, and that otherwise fails 'machine-or-transformation' test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular

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transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere "insignificant post-solution activity." (*In re Bilski*, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008)) Examples of insignificant post-solution activity include data gathering and outputting. Furthermore, the machine or transformation must impose meaningful limits on the scope of the method claims in order to pass the machine-or-transformation test. Please refer to the USPTO's "Guidance for Examining Process Claims in view of *In re Bilski*" memorandum dated January 7, 2009, http://www.uspto.gov/web/offices/pac/dapp/opla/documents/bilski_guidance_memo.pdf.

It is also noted that the mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), <http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf>.

Claims 1, 4-20 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing, thereby failing the machine-or-transformation test; therefore, claims 1, 4-20 are non-statutory under § 101.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-6, 9-10, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandra et al. (US 2001/0032197) in view of Johnson et al. (US 6598029), Collins (3661542), Chichilnisky (WO 00/08567), Gaus et al. (US 6343277) and Shao et al. (US 7191150).

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim 1 –

As per claim 1, Chandra et al. disclose *a method for acquiring and distributing natural gas in relatively large quantities by a gas utility company wherein the purchase of gas from a gas producer and to be distributed by said utility is financed by an intermediary entity having the limitations of:*

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- *negotiating the purchase, transport and storage cost of said gas by one of said utility and said intermediary entity; (see at least Fig. 1; paragraph [0018]; paragraph [0042])*
- *determining a quantity of gas to be purchased based at least in part on [...] gas in a geographic territory served by said utility; (see at least paragraph [0029])*
- *acquiring funds to pay for gas purchased by said intermediary entity by issuing debt instruments by said intermediary entity through financial markets; (see at least paragraphs [0043]-[0045])*
- *providing payment by said intermediary entity for said gas [...] by said intermediary entity; (see at least paragraphs [0043]-[0045])*
- *carrying out one of transporting said gas to a storage facility and identifying said gas at a predetermined storage facility; (see at least paragraphs [0043]-[0045])*
- *determining gas deliverability capacity at said storage facility [...] to provide for scheduling one of repayment and rollover of said debt instruments; (see at least paragraphs [0045]-[0047])*
- *delivering gas to the gas utility company's customers (see at least paragraphs [0043]-[0047])*
- *collecting payments [by said intermediary entity from said utility for gas delivered to utility customers] in accordance with a sales contract between said utility and said intermediary entity; (see at least paragraphs [0046]-[0049])*

Chandra et al. do not explicitly disclose the following limitation:

- *by said intermediary entity from said utility for gas delivered to utility customers*

Johnson et al. teach *by said intermediary entity from said utility for gas delivered to utility customers* (see at least col. 10, ll. 57-58; col. 12, ll. 29-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to include allowing the provider to prepare its own billing statement for such end user taught by Johnson et al. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since applying the actual energy usage data received from each end user's meter and the rate (or other economic incentive) offered at the time by the winning bidder from among the participating providers, the moderator (or an associated adjunct computer) can prepare and transmit a billing statement for each end user or reseller to the respective provider and to such end user or reseller (unless the Provider wishes to prepare its own billing statement for such end user) (see at least col. 10, ll. 50-57; col. 12, ll. 29-38 of Johnson et al.).

Chandra et al. do not explicitly disclose the following limitation:

- *[and] taking title to said gas by said intermediary entity;*

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Johnson et al. teach taking title to said gas by said intermediary entity (see at least col. 5, ll. 47-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to include taking title as taught by Johnson et al. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since in the wholesale power market buyers typically take title to the electric power they purchase at well-established interfaces (see at least col. 3, ll. 53-55 of Johnson et al.).

Chandra et al. do not explicitly disclose the following limitation:

- [facility] by *selected measurements of gas pressure at said storage facility* [to];

Collins teaches *selected measurements of gas pressure at said storage facility* (see at least Abstract; col. 1, ll. 15-21). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to include measuring a change in pressure of a storage facility as taught by Collins. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since the pressure can vary from a maximum when demand is low to a minimum when demand is high (see at least Abstract of Collins).

Chandra et al. do not explicitly disclose the following limitation:

- [on] *historic demand data for [gas]*;

Johnson et al. teach *historic demand data* (see at least col. 7, ll. 24-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to include collecting end user data to create period usage reports as taught by Johnson et al. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since this allows providers to manage available capacity (see at least col. 7, ll. 34-35 of Johnson et al.).

Chandra et al. do not explicitly disclose the following limitation:

- *determining the risk of receiving payment from said gas utility company by said intermediary entity based on selected parameters of said geographic territory using a computer, wherein the risk determination includes assessing the gas deliverability capacity and the historic demand within said geographic territory and costs associated with said debt instruments;*

Chandra et al. in view of Chichilnisky and Gaus et al. teaches *determining the risk of receiving payment from said gas utility company by said intermediary entity based on selected parameters of said geographic territory using a computer, wherein the risk determination includes assessing the gas deliverability capacity and the historic demand within said geographic territory and costs associated with said debt instruments* (see at least paragraphs [0029]; [0041]; [0050] of Chandra et al.; see at least page 4, lines 12-31 of Chichilnisky; see at least col. 1, ll. 60-65; col. 4, l. 57-60, 63-67; col. 3, ll. 23-51; col. 5, ll. 5-18, 41-57; col. 6, ll. 6-12; col. 7, ll. 8-17, 44-47 of Gaus et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to (1) include the instrumentalities for insuring and hedging against risk as taught by Chichilnisky, (2) the risk management module, customer information including amounts of past deliveries, past bills and payment history, normalizing the information such that transaction information from different levels of distribution share the same form, the transaction hub analyzes the customer's requirements and aggregates requirements by supplier of Chandra et al., (3) a cost and consumption module, a reports module that can include expired and about to expire contracts from clients in the database, an energy deliver activity report for a particular LDC, a client listing report, a commission report, cost and consumption reports, historical data . One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since (1) concerns are on the rise with large-scale risks, e.g. weather-related risks in view of increasing volatility of weather, climate changes, etc. (see at least pg. 1, ll. 6-8 of Chichilnisky), (2) allows finer load balancing across different parties and levels of distribution which has additional benefits of facilitating more precise matching of supply to expected demand based on averaging and a variety of pricing plans for the user based on average or expected use (see at least paragraph [0009] of Chandra et al., (3) the flexibility of the system allows very fine adjustment of supply to meet demand, the risk management engine assesses the risk for energy procurement and product design and allows for efficient and economical new products based on predicted consumption by a user ("one rate", "insurance", "prepaid")(see at least paragraph [0050] of Chandra et al.), (4) a computer network system facilitates the agreement between energy consumers and energy suppliers in which energy volumes are aggregated for one or more consumers for bulk purchasing and each consumer gets its won account-specific transaction (see at least col. 1, ll. 60-65 of Gaus et al.).

Chandra et al. do not explicitly disclose the following limitation:

- *conducting one of repayment and rollover of debt instruments at maturities thereof by said intermediary entity utilizing funds received from said utility pursuant to said sales contract.*

Shao et al. teach *conducting one of repayment and rollover of debt instruments at maturities thereof by said intermediary entity utilizing funds received from said utility pursuant to said sales contract* (see at least col. 4, ll. 35-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shao et al. to evaluate individual debt holder accounts as taught by Shao et al. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since a significant portion of debts that people incur are not repaid in a timely fashion (see at least col. 1, ll. 43-44 of Shao et al.).

Claim 4 –

As per claim 4, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses a *method* having the limitations of:

- *said parameters are determined for subdivisions of said geographic territory defined by postal service code.* (see at least col. 4, l. 17; col. 7, ll. 24-27 of Johnson et al.).

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 5 –

As per claim 5, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Chichilnisky, further discloses a *method* having the limitations of:

- *said parameters are selected from a group consisting of population, residential housing units, retail merchant space, industrial production space, household income and sales tax receipts of said geographic territory.* (see at least pg. 1, ll. 6-8, pg. 4, ll. 12-31 of Chichilnisky)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 6 –

As per claim 6, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Chichilnisky, further discloses a *method* having the limitations of:

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- *said parameters are selected from a group consisting of historical heating/cooling degree days, present weather forecast, and historical weather by one of an hourly and daily basis within said geographic territory.* (see at least pg. 1, ll. 6-8, pg. 4, ll. 12-31 Chichilnisky)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 7 –

As per claim 7, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above.

Chichilnisky, further discloses *a method* having the limitations of:

- *said parameters are selected from a group consisting of population, residential housing units, retail merchant space, industrial production space, household income and sales tax receipts of said geographic territory.* (see at least pg. 1, ll. 6-8, pg. 4, ll. 12-31 of Chichilnisky)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

- *forecasting demand patterns for gas to be withdrawn from storage based on the parameters and comparing said demand patterns with the capability of withdrawal of gas from said storage facility by a facility operator, and deriving a gas release schedule in consideration of the forecasting and comparing.* (see at least paragraphs [0041]-[0045] of Chandra et al.)

Claim 8 –

As per claim 8, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 7 as described above. Chandra et al. further disclose:

- *notifying said facility operator of requirements to release gas from storage in accordance with the derived schedule.* (see at least paragraph [0041]-[0045] of Chandra et al.)

Claim 9 –

As per claim 9, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses *a method* having the limitations of:

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- *forecasting expected cash flows from customers serviced by said utility in said geographic territory.* (see at least col. 4, l. 17; col. 7, ll. 24-27 of Johnson et al.)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 10 –

As per claim 10, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 9 as described above. Chandra et al. and Johnson et al., further discloses *a method* having the limitations of:

- *determining the requirements for one of issuance and reissuance of debt instruments and at least one of monetary amounts thereof and maturity dates thereof and issuing debt instruments as required to finance the purchase of said gas by said intermediary entity* (see at least col. 4, l. 17; col. 7, ll. 24-27 of Johnson et al.) *and corresponding to expected cash flows to said intermediary entity from said utility* (see at least see at least paragraphs [0043]-[0045] of Chandra et al.).

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 14 –

As per claim 14, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses *a method* having the limitations of:

- *determining the anticipated producing rate of gas for storage in said storage facility and determining the dollar volume of debt instruments available periodically based on said rate of production and delivery to storage.* (see at least col. 4, l. 17; col. 7, ll. 24-27 of Johnson et al.)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 15 –

As per claim 15, Chandra et al. in view of Johnson et al., Collins, Gaus et al. Chichilnisky, and Shao et al. teach the method of claim 1 as described above. Collins, further discloses *a method* having the limitations of:

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- *monitoring said gas pressure and fill quantities in said storage facility to determine storage facility performance and determining the extent of rollover of debt instruments as said debt instruments reach maturity based on said storage facility performance.* (see at least Abstract of Collins)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 16 –

As per claim 16, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses *a method* having the limitations of:

- *monitoring the aging of accounts receivable of said utility to determine the risk associated with said intermediary entity achieving a predetermined return on investment.* (see at least col. 4, l. 17; col. 7, ll. 24-27 of Johnson et al.)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 17 –

As per claim 17, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses *a method* having the limitations of:

- *acquiring data with respect to said utility related to historical daily temperatures in a said geographic territory to determine the parameters of expected placement of gas in storage and withdrawal of gas from storage for said utility.* (see at least pg. 1, ll. 6-8, pg. 4, ll. 12-31 of Chichilnisky)

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

Claim 18 –

As per claim 18, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above.

Chichilnisky, further discloses *a method* having the limitations of:

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- *said parameters are selected from a group consisting of historical heating/cooling degree days, present weather forecast, and historical weather by one of an hourly and daily basis within said geographic territory. (see at least pg. 1, ll. 6-8, pg. 4, ll. 12-31 Chichilnisky)*

The motivation for making this modification to the teachings of Chandra et al. is the same as that set forth above, in the rejection of Claim 1.

- *forecasting demand patterns for gas to be withdrawn from storage based on the parameters and comparing said demand patterns with the capability of withdrawal of gas from said storage facility by a facility operator, and deriving a gas release schedule in consideration of the forecasting and comparing. (see at least paragraphs [0041]-[0045] of Chandra et al.)*

Claim 19 –

As per claim 19, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, and Shao et al. teach the method of claim 18 as described above. Chandra et al. further disclose:

- *notifying said facility operator of requirements to release gas from storage in accordance with the derived schedule. (see at least paragraph [0041]-[0045] of Chandra et al.)*

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chandra et al. (US 2001/0032197) in view of, Collins (3661542), Chichilnisky (WO 00/08567), Gaus et al. (US 6343277).

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim 20 –

As per claim 20, Chandra et al. disclose a computer implemented method for acquiring and distributing natural gas in relatively large quantities by a gas utility company wherein the purchase of gas from a gas producer and to be distributed by said utility is financed by an intermediary entity having the limitations of:

- *receiving a budget of the quantity and timing of gas purchases by the gas utility company over a predetermined period of time over an internet connection from the gas utility company; (see at least paragraphs [0024]; [0026]-[0027]; [0041]-[0047])*

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- *determining gas deliverability capacity at said storage facility [...] to provide for scheduling one of repayment and rollover of said debt instruments issued by the intermediary entity through financial markets; (see at least paragraphs [0043], [0045]-[0047])*

Chandra et al. do not explicitly disclose the following limitation:

- *[facility] by selected measurements of gas pressure at said storage facility [to];*

Collins teaches *selected measurements of gas pressure at said storage facility* (see at least Abstract; col. 1, ll. 15-21). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to include measuring a change in pressure of a storage facility as taught by Collins. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since the pressure can vary from a maximum when demand is low to a minimum when demand is high (see at least Abstract of Collins).

Chandra et al. do not explicitly disclose the following limitation:

- *determining the risk of receiving payment from said gas utility company by said intermediary entity based on selected parameters of said geographic territory using a computer, wherein the risk determination includes assessing the gas deliverability capacity and the historic demand within said geographic territory and costs associated with said debt instruments;*

Chandra et al. in view of Chichilnisky and Gaus et al. teaches *determining the risk of receiving payment from said gas utility company by said intermediary entity based on selected parameters of said geographic territory using a computer, wherein the risk determination includes assessing the gas deliverability capacity and the historic demand within said geographic territory and costs associated with said debt instruments* (see at least paragraphs [0029]; [0041]; [0050] of Chandra et al.; see at least page 4, lines 12-31 of Chichilnisky; see at least col. 1, ll. 60-65; col. 4, l. 57-60, 63-67; col., 3, ll. 23-51; col. 5, ll. 5-18, 41-57; col. 6, ll. 6-12; col. 7, ll. 8-17, 44-47 of Gaus et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. to (1) include the instrumentalities for insuring and hedging against risk as taught by Chichilnisky, (2) the risk management module, customer information including amounts of past deliveries, past bills and payment history, normalizing the information such that transaction information from different levels of distribution share the same form, the transaction hub analyzes the customer's requirements and aggregates requirements by supplier of Chandra et al., (3) a cost and consumption module, a reports module that can include expired and about to

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expire contracts from clients in the database, an energy deliver activity report for a particular LDC, a client listing report, a commission report, cost and consumption reports, historical data . One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in this way since (1) concerns are on the rise with large-scale risks, e.g. weather-related risks in view of increasing volatility of weather, climate changes, etc. (see at least pg. 1, ll. 6-8 of Chichilnisky), (2) allows finer load balancing across different parties and levels of distribution which has additional benefits of facilitating more precise matching of supply to expected demand based on averaging and a variety of pricing plans for the user based on average or expected use (see at least paragraph [0009] of Chandra et al., (3) the flexibility of the system allows very fine adjustment of supply to meet demand, the risk management engine assesses the risk for energy procurement and product design and allows for efficient and economical new products based on predicted consumption by a user ("one rate", "insurance", "prepaid")(see at least paragraph [0050] of Chandra et al.), (4) a computer network system facilitates the agreement between energy consumers and energy suppliers in which energy volumes are aggregated for one or more consumers for bulk purchasing and each consumer gets its won account-specific transaction (see at least col. 1, ll. 60-65 of Gaus et al.).

10. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al., as applied to claims 1, 4-6, 9-10, 14-17 above, and further in view of Mandler et al. (US 5732400).

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim 11 –

As per claim 11, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. teach the method of claim 1 as described above. Johnson et al., further discloses a *method* having the limitations of:

- *determining an interest rate to be one of charged to said utility and paid on said debt instruments by assessing risks of loss by said intermediary entity, said risks of loss selected from a group consisting of interest rate risk, default on repayment of said debt instruments risk, maturity schedule of debt instruments risk, injection, storage and deliverability of said gas risk, gas measurement risk, physical loss of said gas during transmission and in storage risk, business conditions risk and economic risk.*

Mandler teaches *determining an interest rate to be one of charged to said utility and paid on said debt instruments by assessing risks of loss by said intermediary entity, said risks of loss selected from a group consisting of interest rate risk, default on repayment of said debt instruments risk, maturity schedule of debt instruments risk, injection, storage and deliverability of said gas risk, gas measurement risk, physical loss of said gas during transmission and in storage risk, business conditions risk and economic risk.* It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. to include a risk based purchase of a good wherein a third party financial clearing house makes a dynamic real time risk classification of each buyer utilizing an online repository of credit data, including either in-house data or data obtained from a commercial credit service, the financial clearinghouse further determines a risk based discount rate (interest rate) as a function of the buyers risk classification as taught by Madler. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. in this way since in any financing deal, if the risk associated with a loan is greater, there must be a greater incentive to complete the deal. If there were more risk associated with a certain transaction, then one would expect to receive a greater return on their investment as compensation.

Claim 12 –

As per claim 12, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al., Mandler teach the method of claim 11 as described above. Mandler, further discloses *a method* having the limitations of:

- *determining an interest rate to be charged to said utility based on one or more of said risks.* (see at least Column 3, lines 43–46 of Mandler)

The motivation for making this modification to the teachings of Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. is the same as that set forth above, in the rejection of Claim 11.

Claim 13 –

As per claim 13, Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al., Mandler teach the method of claim 11 as described above. Mandler, further discloses *a method* having the limitations of:

- *assigning a weight value to selected ones of said risks and determining a composite risk value.* (see at least Column 3, lines 43-46; a risk based discount rate as a function of the buyers risk classification of Mandler)

The motivation for making this modification to the teachings of Chandra et al. in view of Johnson et al., Collins, Chichilnisky, Gaus et al. and Shao et al. is the same as that set forth above, in the rejection of Claim 11.

Response to Arguments

11. Applicant's Amendment/Response 17 December 2008 have been fully considered but they are not persuasive for at least the following reasons:

- Chandra et al. discloses at least the following:
 - Transaction Hub (1) → facilitates energy procurement, billing, and service transactions. Please note procurement is the acquisition of goods and/or services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place and from the right source for the direct benefit or use of corporations, or individuals, generally via a contract.
 - Marketing channel (2) → supplies goods or services of the owner of transaction hub 1 (the Transaction may be the Marketing Channel 2)
 - Wholesale marketers (5) → provide products and services sold by the owner of transaction hub (1), and examples of wholesale marketers include ..., ***electric and gas utilities***, natural gas producers, natural gas marketer, natural gas storage owners and operators, ...
 - Paragraph [0042] recites "Transaction hub 1 then contracts in step 140 with suppliers such as wholesale marketers 5 in transaction 15. The contract terms include delivery locations, quantities, prices, payment information, and other terms and conditions. These may be long-term contracts or short, standard forms. Again, these terms may be standardized to facilitate dynamic load balancing."
 - Flow of energy: wholesale marketer (producer) (5) → wholesale distributor (6) → local distributor (7) → customers (3/4)

- Applicants at page 7 of 11 of the response filed 25 April 2008 state "Chandra et al. teach that the Marketing Channel 2 is an entity marketing goods or services to end customers. The Marketing Channel may be a utility ([0018]). And the Transaction Hub 1 may itself be a Marketing Channel 2. Of course, if the Transaction Hub is itself the Marketing Channel/Utility Co. then the Transaction is not an Intermediary as taught and claimed by Applicant..." The Examiner respectfully disagrees with Applicant's assessment for at least the following reasons and the comments made above with regard to Chandra et al. disclosure:
 - a. The claim does not state that the intermediary can not be a utility;
 - b. The claim does not require that the intermediary and utility are not one in the same;
 - c. Please note resellers/intermediaries can be a multitude of entities which can include different utilities;
 - d. Please note that the wholesale marketer (5) can also be a utility;
 - e. Etc.
- Applicants further state "Chandra et al. does not teach or suggest, 'collecting payments by said intermediary entity from said utility company in accordance with a sales contract between said utility company and said intermediary entity'." The Examiner respectfully disagrees since the claim does not specifically specify how the "payments" are transferred, i.e. a customer remits payment to said utility, said utility remits payment to said intermediary. Moreover, the Examiner respectfully point Applicants to paragraph [0045] which discusses the accounting engine. Chandra et al. teaches collecting payments in accordance with a sales contract between said utility company and said intermediary. If applicants continue to argue that Chandra does not teach by said intermediary from said utility company, it is respectfully pointed out that Johnson et al. discloses the moderator transmit a billing statement for each end user or reseller to the respective provider and to such end user or reseller (unless the provider wishes to prepare its own billing statement for such end user. Johnson et al. therefore provides different alternatives to how a "contract" is billed and paid. Please note Chandra et al. also discloses the following:
 - Risk management (26) [0029];[0050]
 - o Used to do risk management for energy procurement and product design (i.e. come up with pricing schemes such as flat rate)
 - o "one rate" product in which a customer's 12-month historical high consumption is set as a maximum monthly usage for a set, generally discounted fee;
 - o "insurance" product that uses the same history to establish a fixed fee even if the user goes above the previous high consumption;

- o "prepaid" product in which a year's consumption is paid up front based on a two-year history.
- Applicants argue Chandra does not teach or suggest "acquiring funds to pay for gas purchased by the intermediary entity by issuing debt instrument by the intermediary entity through financial markets. The Examiner respectfully disagrees, paragraph [0043] of Chandra discloses that the transaction hub purchases supply for customer requirements. Moreover, paragraph [0042] of Chandra states that transaction hub contracts with suppliers such as wholesalers, the contract terms include delivery locations, quantities, prices, payment information, and other terms and conditions, which may be long-term contracts or short, standard forms. The claim does not specify that the funds are acquired from a third party as in for example a loan.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH M. MONFELDT whose telephone number is (571)270-1833. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm (EST) ALT Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571)272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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